

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 2  
**DOCKET NO.:** 2006-1877-MWD-E **TCEQ ID:** RN101916666 **CASE NO.:** 31565  
**RESPONDENT NAME:** City of Shepherd

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input type="checkbox"/> MULTI-MEDIA (check all that apply)	<input type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input checked="" type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION
<p><b>SITE WHERE VIOLATION(S) OCCURRED:</b> City of Shepherd wastewater system, approximately 1,400 feet northeast of the intersection of United States Highway 59 and State Highway 150, San Jacinto County</p> <p><b>TYPE OF OPERATION:</b> Domestic wastewater system</p> <p><b>SMALL BUSINESS:</b>    <input type="checkbox"/> Yes    <input checked="" type="checkbox"/> No</p> <p><b>OTHER SIGNIFICANT MATTERS:</b> There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.</p> <p><b>INTERESTED PARTIES:</b> No one other than the ED and the Respondent has expressed an interest in this matter.</p> <p><b>COMMENTS RECEIVED:</b> The <i>Texas Register</i> comment period expired on June 18, 2007. No comments were received.</p> <p><b>CONTACTS AND MAILING LIST:</b>  <b>TCEQ Attorney/SEP Coordinator:</b> Ms. Melissa Keller, SEP Coordinator, Enforcement Division, MC 219, (512) 239-1768  <b>TCEQ Enforcement Coordinator:</b> Ms. Kim Morales, Enforcement Division, Enforcement Team 5, MC R-12, (713) 422-8938; Mr. Steven Lopez, Enforcement Division, MC 219, (512) 239-1896  <b>Respondent:</b> The Honorable Obie Daniels, Mayor, City of Shepherd, 11020 Highway 150, Shepherd, Texas 77371  <b>Respondent's Attorney:</b> Not represented by counsel on this enforcement matter</p>		

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b>  <input type="checkbox"/> Complaint  <input type="checkbox"/> Routine  <input type="checkbox"/> Enforcement Follow-up  <input checked="" type="checkbox"/> Records Review</p> <p><b>Date(s) of Complaints Relating to this Case:</b> None</p> <p><b>Date of Investigation Relating to this Case:</b> September 21, 2006</p> <p><b>Date of NOE Relating to this Case:</b> October 18, 2006 (NOE)</p> <p><b>Background Facts:</b> This was a routine record review. One violation was documented.</p> <p><b>WATER</b></p> <p>Failed to comply with permitted effluent limits [30 TEX. ADMIN. CODE § 305.125(1), TEX. WATER CODE § 26.121(a) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 11380001 Final Effluent Limitations and Monitoring Requirements No. 1].</p>	<p><b>Total Assessed:</b> \$3,840</p> <p><b>Total Deferred:</b> \$768  <input checked="" type="checkbox"/> Expedited Settlement  <input type="checkbox"/> Financial Inability to Pay</p> <p><b>SEP Conditional Offset:</b> \$3,072</p> <p><b>Total Paid (Due) to General Revenue:</b> \$0</p> <p><b>Site Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b>  <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken:</b></p> <p>1) The Executive Director recognizes that the City has implemented the following corrective measures at the Facility:</p> <p>a. On June 10, 2006, completed repairs and installed two rotors to ensure proper performance of plant operations; and</p> <p>b. On July 31, 2006, obtained compliance with permitted effluent limits.</p> <p><b>Ordering Provisions:</b></p> <p>2) The Order will require the Respondent to implement and complete a Supplemental Environmental Project (SEP). (See SEP Attachment A)</p>

**Attachment A**  
**Docket Number: 2006-1877-MWD-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>City of Shepherd</b>
<b>Payable Penalty Amount:</b>	<b>Three Thousand Seventy-Two Dollars (\$3,072)</b>
<b>SEP Amount:</b>	<b>Three Thousand Seventy-Two Dollars (\$3,072)</b>
<b>Type of SEP:</b>	<b>Pre-approved</b>
<b>Third-Party Recipient:</b>	<b>Texas Association of Resource Conservation and Development Areas, Inc. ("RC&amp;D")- Unauthorized Trash Dump Clean-Up</b>
<b>Location of SEP:</b>	<b>San Jacinto County</b>

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

**A. Project**

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to coordinate with city and/or county governmental officials regarding the clean up of sites where trash has been disposed of illegally. Eligible sites will be limited to those where a responsible party can not be identified and where there is no pre-existing obligation to clean up the site by the owner or the government. Additionally, reasonable efforts must have already been taken to prevent the dumping. SEP monies will be used to pay for the direct cost of collection and disposal of debris. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

**B. Environmental Benefit**

This SEP will provide a discernible environmental benefit by helping rid communities of the dangers and health threats associated with non-regulated trash dumps which contaminate air and water, and harbor disease carrying animals and insects.

# THEORY OF THE EARTH

CHAPTER I. OF THE ORIGIN OF THE EARTH.

SECTION I.

OF THE ORIGIN OF THE EARTH.

THE EARTH, as we see it, is a globe, or a sphere, of a very great size, and of a very great weight. It is composed of a great number of different parts, and of a great number of different materials. It is a very curious and interesting object, and one which has attracted the attention of mankind from the earliest times.

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SECTION II.

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SECTION III.

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C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.  
1716 Briarcrest Drive  
Bryan, Texas 77802-2700

**3. Records and Reporting**

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division  
Attention: SEP Coordinator, MC 219  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality  
Financial Administration Division, Revenues  
Attention: Cashier, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.



**5. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

**6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.







Policy Revision 2 (September 2002)

## Penalty Calculation Worksheet (PCW)

PCW Revision May 19, 2005

DATES	Assigned	23-Oct-2006	Screening	26-Oct-2006	EPA Due	
	PCW	27-Oct-2006				

## RESPONDENT/FACILITY INFORMATION

Respondent	City of Shepherd			
Reg. Ent. Ref. No.	RN101916666			
Facility/Site Region	10-Beaumont	<	Major/Minor Source	Minor Source

## CASE INFORMATION

Enf./Case ID No.	31565	No. of Violations	1
Docket No.	2006-1877-MWD-E	Order Type	1660
Media Program(s)	Water Quality	Enf. Coordinator	Ruben Soto
Multi-Media		EC's Team	Enforcement Team 1
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

## TOTAL BASE PENALTY (Sum of violation base penalties)

Subtotal 1 **\$2,000**

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History **122% Enhancement** Subtotals 2, 3, & 7 **\$2,440**

Notes The Respondent self-reported 14 monthly effluent violations and received six NOV's without same or similar violations to those cited in this action. Also, two Agreed Orders with denial of liability were issued.

Culpability **No** **0% Enhancement**Subtotal 4 **\$0**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply **25% Reduction**Subtotal 5 **-\$500**

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary	X	
N/A		(mark with a small x)

Notes The Respondent came into compliance with the permitted effluent limits by July 31, 2006.

Economic Benefit

0% Enhancement\*

Subtotal 6 **\$0**

Total EB Amounts	\$124
Approx. Cost of Compliance	\$5,000

\*Capped at the Total EB \$ Amount

## SUM OF SUBTOTALS 1-7

Final Subtotal **\$3,940**

## OTHER FACTORS AS JUSTICE MAY REQUIRE

**3% Reduction**Adjustment **-\$100**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes Recommend reduction in the penalty so that monthly self-reported violations do not overly impact the penalty amount.

Final Penalty Amount **\$3,840**

## STATUTORY LIMIT ADJUSTMENT

Final Assessed Penalty **\$3,840**

## DEFERRAL

**20% Reduction**Adjustment **-\$768**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes Deferral offered for expedited settlement.

## PAYABLE PENALTY

**\$3,072**

Screening Date 26-Oct-2006

Docket No. 2006-1877-MWD-E

PCW

Respondent City of Shepherd

Policy Revision 2 (September 2002)

Case ID No. 31565

PCW Revision May 19, 2005

Reg. Ent. Reference No. RN101916666

Media [Statute] Water Quality

Enf. Coordinator Ruben Soto

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action (number of NOVs meeting criteria)	14	70%
	Other written NOVs	6	12%
Orders	Any agreed final enforcement orders containing a denial of liability (number of orders meeting criteria)	2	40%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government (number of judgments or consent decrees meeting criteria)	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government (number of counts)	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which notices were	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 (number of audits for which violations were disclosed)	0	0%
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 122%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

## Compliance History Notes

The Respondent self-reported 14 monthly effluent violations and received six NOVs without same or similar violations to those cited in this action. Also, two Agreed Orders with denial of liability were issued.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 122%

<b>Screening Date</b>	26-Oct-2006	<b>Docket No.</b>	2006-1877-MWD-E	<b>PCW</b>
<b>Respondent</b>	City of Shepherd	<i>Policy Revision 2 (September 2002)</i>		
<b>Case ID No.</b>	31565	<i>PCW Revision May 19, 2005</i>		
<b>Reg. Ent. Reference No.</b>	RN101916666			
<b>Media [Statute]</b>	Water Quality			
<b>Enf. Coordinator</b>	Ruben Soto			
<b>Violation Number</b>	1			
<b>Primary Rule Cite(s)</b>	30 Tex. Admin. Code § 305.125(1), Tex. Water Code § 26.121(a) and TPDES Permit No. 11380001 Final Effluent Limitations and Monitoring Requirements No. 1			
<b>Secondary Rule Cite(s)</b>				
<b>Violation Description</b>	Failure to comply with permitted effluent limits as detailed in the attached chart.			
		<b>Base Penalty</b>	\$10,000	

>> **Environmental, Property and Human Health Matrix**

		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
OR	Actual			X	<b>Percent</b> 10%
	Potential				

>> **Programmatic Matrix**

		Falsification	Major	Moderate	Minor	<b>Percent</b>

Matrix Notes: A simplified model was utilized to evaluate the values for Ammonia Nitrogen to determine whether the discharged amounts of pollutants exceeded protective levels. Carbonaceous Biochemical Oxygen Demand ("CBOD") and Flow were also considered. As a result of these discharges, human health or the environment has been exposed to insignificant amounts of pollutants which do not exceed levels that are protective of human health or environmental receptors.

**Adjustment** -\$9,000**Base Penalty Subtotal** \$1,000**Violation Events**

**Number of Violation Events** 2

mark only one use a small x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

**Violation Base Penalty** \$2,000

Two quarterly events are recommended.

**Economic Benefit (EB) for this violation****Statutory Limit Test****Estimated EB Amount** \$124**Violation Final Penalty Total** \$3,840**This violation Final Assessed Penalty (adjusted for limits)** \$3,840

**Economic Benefit Worksheet**

Respondent City of Shepherd  
 Case ID No. 31565  
 Reg. Ent. Reference No. RN101916666  
 Media [Statute] Water Quality  
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
<b>Delayed Costs</b>							
Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$5,000	31-Jan-2006	31-Jul-2006	0.5	\$124	n/a	\$124

Notes for DELAYED costs

Estimated cost to repair the broken rotors which may have alleviated or prevented the noncompliance. Date required is the first month of noncompliance. Final date is the date of compliance.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$5,000

TOTAL \$124

### Effluent Limit Violation Table

Respondent: City of Shepherd

Docket Number: 2006-1877-MWD-E

Enforcement Coordinator: Ruben Soto

Corresponds to Violation Number: 1

Month/Year	NH <sub>3</sub> -N Daily Average Loading Limit: 10 lbs/day	NH <sub>3</sub> -N Daily Average Concentration Limit: 3 mg/L	NH <sub>3</sub> -N Single Grab Concentration Limit: 15 mg/L
January 2006	c	3.78	c
February 2006	10.10	6.97	c
March 2006	c	5.34	15.8
April 2006	10.54	7.78	c
May 2006	26.6	19.9	36.4
June 2006	15.3	11.9	30.8

NH<sub>3</sub>-N = Ammonia Nitrogen   lbs/day = pounds per day   mg/L = milligrams per liter   c = in compliance



## Compliance History

Customer/Respondent/Owner-Operator:	CN600656458 City of Shepherd	Classification: AVERAGE	Rating: 8.52
Regulated Entity:	RN101916666 CITY OF SHEPHERD	Classification: AVERAGE	Site Rating: 8.52
ID Number(s):	WASTEWATER PERMIT WQ0011380001 WASTEWATER PERMIT TPDES0054160 SLUDGE REGISTRATION 22367 WASTEWATER LICENSE WQ0011380001		
Location:	APPROXIMATELY 1,400 FEET NORTHEAST OF INTERSECTION OF UNITED STATES HIGHWAY 59 AND STATE HIGHWAY 150, SAN JACINTO COUNTY		
		Rating Date:	9/1/2006
		Repeat Violator:	NO
TCEQ Region:	REGION 10 - BEAUMONT		
Date Compliance History Prepared:	October 26, 2006		
Agency Decision Requiring Compliance History:	Enforcement		
Compliance Period:	October 26, 2001 to October 26, 2006		
TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History			
	Name: Ruben Soto	Phone: 512 239-4571	

### Site Compliance History Components

- |  |     |
|--|-----|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No  |
| 3. If Yes, who is the current owner?   | N/A |
| 4. If Yes, who was/were the prior owner(s)?  | N/A |
| 5. When did the change(s) in ownership occur?  | N/A |

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

Effective Date: 10/10/2005 ADMINORDER 2004-0738-MWD-E

Classification:	Moderate
Citation:	2D TWC Chapter 26, SubChapter A 26.121(a) 30 TAC Chapter 305, SubChapter F 305.125(1)
Rqmt Prov:	Effluent Limits PERMIT
Description:	Failure to comply with permit effluent limits as documented by a TCEQ record review of self-reported data.

Effective Date: 04/13/2003 ADMINORDER 2002-0065-MLM-E

Classification:	Moderate
Citation:	2C TWC Chapter 20, SubChapter A 26.121(a)(1) 30 TAC Chapter 305, SubChapter F 305.125(1)
Rqmt Prov:	cond 2(g) PERMIT
Description:	Failure to prevent unauthorized discharges.
Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) 30 TAC Chapter 305, SubChapter F 305.125(9)(A)
Rqmt Prov:	Req 7 PERMIT
Description:	Failure to notify TCEQC of an unauthorized discharge w/in the required notification period.
Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) 30 TAC Chapter 305, SubChapter F 305.125(5)
Rqmt Prov:	OR 1 PERMIT
Description:	Failure to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.
Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) 30 TAC Chapter 305, SubChapter F 305.125(5)
Rqmt Prov:	OP1 PERMIT
Description:	Failure to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.

Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) 30 TAC Chapter 305, SubChapter F 305.125(5)
Rqmt Prov:	OP 1 PERMIT
Description:	Failure to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.
Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)
Rqmt Prov:	req 7(c) PERMIT
Description:	Failure to notify the TNRCC Regional Office and the Manager of the Water/MM Section of the Enforcement Division, w/in the required notification period, for exceeding effluent limits.
Classification:	Moderate
Citation:	2C TWC Chapter 20, SubChapter A 26.121(a)(1) 30 TAC Chapter 305, SubChapter F 305.125(1)
Rqmt Prov:	1 PERMIT
Description:	Failure to prevent unauthorized effluent discharges which deviated from the permitted effluent limits.
Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)
Rqmt Prov:	req 1 PERMIT
Description:	Failure to monitor effluent quality as required by the permit.
Classification:	Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)
Rqmt Prov:	pg 25 sec III G PERMIT
Description:	Failure to submit an annual sludge report to the TNRCC Regional Office and TNRCC Database and Administration Team of the Enforcement Division by 9/1 of each yr.
Classification:	Moderate
Citation:	30 TAC Chapter 290, SubChapter D 290.44(h)(4)[G] 30 TAC Chapter 317 317.4(a)(8)
Description:	Failure to conduct the required annual testing of the backflow prevention assembly.

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1 06/13/2003 (185989)  
2 06/13/2003 (185986)  
3 07/19/2002 (247071)  
4 06/13/2003 (185982)  
5 06/13/2003 (185980)  
6 04/17/2002 (185979)  
7 03/15/2004 (307218)  
8 04/17/2002 (307220)  
9 10/08/2002 (247072)  
10 04/17/2002 (307222)  
11 03/31/2006 (473148)  
12 03/15/2004 (307223)  
13 10/20/2006 (513651)  
14 08/28/2002 (307225)  
15 03/15/2004 (307226)  
16 08/28/2002 (307228)  
17 08/22/2003 (307229)  
18 03/31/2006 (473149)  
19 08/28/2002 (307231)  
20 08/22/2003 (307232)  
21 08/28/2002 (307234)  
22 08/22/2003 (307235)  
23 07/10/2006 (501363)  
24 10/07/2002 (307237)  
25 10/31/2003 (307238)  
26 07/10/2006 (501364)  
27 07/09/2004 (332939)  
28 03/31/2006 (473150)  
29 10/15/2002 (307240)  
30 10/31/2003 (307241)  
31 12/30/2002 (307242)  
32 12/05/2003 (307243)



33 10/19/2005 (473151)  
 34 12/30/2002 (307244)  
 35 06/21/2004 (356785)  
 36 01/14/2004 (307245)  
 37 08/04/2004 (356786)  
 38 04/14/2005 (422420)  
 39 01/23/2003 (307246)  
 40 10/19/2005 (473152)  
 41 06/01/2005 (422421)  
 42 01/14/2004 (307247)  
 43 08/04/2004 (356787)  
 44 02/24/2006 (496990)  
 45 06/30/2005 (422422)  
 46 01/03/2006 (473153)  
 47 06/27/2005 (422423)  
 48 08/30/2004 (356788)  
 49 10/25/2004 (356789)  
 50 10/25/2004 (356790)  
 51 12/09/2004 (356791)  
 52 03/01/2006 (473154)  
 53 01/23/2006 (473155)  
 54 01/23/2006 (473156)  
 55 09/08/2005 (431039)  
 56 08/31/2006 (510289)  
 57 11/16/2004 (340123)  
 58 03/10/2005 (384477)  
 59 03/22/2005 (384478)  
 60 01/16/2002 (247070)  
 61 03/10/2005 (384479)  
 62 07/27/2005 (443360)  
 63 08/18/2005 (443361)  
 64 07/25/2002 (186008)  
 65 04/07/2004 (267659)  
 66 07/25/2002 (186005)  
 67 11/26/2001 (186002)  
 68 02/18/2004 (283337)  
 69 03/15/2005 (392431)  
 70 05/03/2005 (379338)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 07/19/2002	(247071)	
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)	
Description:	NON-RPT VIOS FOR MONIT PER OR PIPE	
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)	
Description:	NON-RPT VIOS FOR MONIT PER OR PIPE	
Date: 11/17/2004	(340123)	
Self Report?	NO	Classification: Minor
Rqmt Prov:	PERMIT IA	
Description:	Failure to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.	
Self Report?	NO	Classification: Minor
Rqmt Prov:	PERMIT IA	
Description:	Failure to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.	
Self Report?	NO	Classification: Minor
Rqmt Prov:	PERMIT IA	
Description:	Failure to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.	
Self Report?	NO	Classification: Minor
Rqmt Prov:	PERMIT IA	
Description:	Failure to submit noncompliance notification as required by the permit	
Self Report?	NO	Classification: Minor
Rqmt Prov:	PERMIT IA	
Description:	Failure to ensure that all systems of collection, treatment, and disposal are properly operated and maintained.	

Self Report?	NO	Classification: Moderate
Rqmt Prov:	PERMIT IA	
Description:	Failure to prevent the discharge of floating solids	
Date: 02/28/2002 (307220)		
Self Report?	YES	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]	
Description:	Failure to meet the limit for one or more permit parameter	
Date: 10/08/2002 (247072)		
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)	
Description:	NON-RPT VIOS FOR MONIT PER OR PIPE	
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)	
Description:	NON-RPT VIOS FOR MONIT PER OR PIPE	
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)	
Description:	NON-RPT VIOS FOR MONIT PER OR PIPE	
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)	
Description:	NON-RPT VIOS FOR MONIT PER OR PIPE	
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1)	
Description:	NON-RPT VIOS FOR MONIT PER OR PIPE	
Date: 01/31/2006 (473148)		
Self Report?	YES	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]	
Description:	Failure to meet the limit for one or more permit parameter	
Date: 05/31/2003 (307229)		
Self Report?	YES	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]	
Description:	Failure to meet the limit for one or more permit parameter	
Date: 04/30/2006 (501363)		
Self Report?	YES	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]	
Description:	Failure to meet the limit for one or more permit parameter	
Date: 02/28/2006 (473149)		
Self Report?	YES	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]	
Description:	Failure to meet the limit for one or more permit parameter	
Date: 08/31/2003 (307238)		
Self Report?	YES	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]	
Description:	Failure to meet the limit for one or more permit parameter	
Date: 05/31/2006 (501364)		
Self Report?	YES	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) TWC Chapter 26 26.121(a)[G]	
Description:	Failure to meet the limit for one or more permit parameter	
Date: 07/09/2004 (332939)		
Self Report?	NO	Classification: Moderate
Citation:	30 TAC Chapter 305, SubChapter F 305.125(1) 30 TAC Chapter 305, SubChapter F 305.125(17)	
Description:	NON-RPT VIOS FOR MONIT PER OR PIPE	

[illegible]

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Date: 03/15/2005 (392431)

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
30 TAC Chapter 305, SubChapter F 305.125(17)

Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
30 TAC Chapter 305, SubChapter F 305.125(17)

Description: NON-RPT VIOS FOR MONIT PER OR PIPE

Self Report? NO Classification: Moderate  
Citation: 30 TAC Chapter 305, SubChapter F 305.125(1)  
30 TAC Chapter 305, SubChapter F 305.125(17)

Description: NON-RPT VIOS FOR MONIT PER OR PIPE

F. Environmental audits.  
N/A

G. Type of environmental management systems (EMSs).  
N/A

H. Voluntary on-site compliance assessment dates.  
N/A

I. Participation in a voluntary pollution reduction program.  
N/A

J. Early compliance.  
N/A

Sites Outside of Texas  
N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



**IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
CITY OF SHEPHERD  
RN101916666**

§ **BEFORE THE**  
§  
§ **TEXAS COMMISSION ON**  
§  
§ **ENVIRONMENTAL QUALITY**  
§

## **AGREED ORDER DOCKET NO. 2006-1877-MWD-E**

### **I. JURISDICTION AND STIPULATIONS**

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding City of Shepherd ("the City") under the authority of TEX. WATER CODE chs. 7 and 26. The Executive Director of the TCEQ, through the Enforcement Division, and the City appear before the Commission and together stipulate that:

1. The City owns and operates a domestic wastewater system located approximately 1,400 feet northeast of the intersection of United States Highway 59 and State Highway 150 in San Jacinto County, Texas (the "Facility").
2. The City has discharged municipal waste into or adjacent to any water in the state under TEX. WATER CODE ch. 26.
3. The Commission and the City agree that the Commission has jurisdiction to enter this Agreed Order, and that the City is subject to the Commission's jurisdiction.
4. The City received notice of the violations alleged in Section II ("Allegations") on or about October 23, 2006.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the City of any violation alleged in Section II ("Allegations"), nor of any statute or rule.
6. An administrative penalty in the amount of Three Thousand Eight Hundred Forty Dollars (\$3,840) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Seven Hundred Sixty-Eight Dollars (\$768) is deferred contingent upon the City's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the City fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the City to pay all or part of the deferred penalty. Three Thousand Seventy-Two Dollars (\$3,072) shall be conditionally offset by the City's completion of a Supplemental Environmental Project.



7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and the City have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that the City has implemented the following corrective measures at the Facility:
  - a. On June 10, 2006, completed repairs and installed two rotors to ensure proper performance of plant operations; and
  - b. On July 31, 2006, obtained compliance with permitted effluent limits.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the City has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the City is alleged to have failed to comply with permitted effluent limits as detailed in the chart below, in violation of 30 TEX. ADMIN. CODE § 305.125(1), TEX. WATER CODE § 26.121(a) and Texas Pollutant Discharge Elimination System ("TPDES") Permit No. 11380001 Final Effluent Limitations and Monitoring Requirements No. 1, as documented during a record review conducted on September 21, 2006.





Month/Year	NH <sub>3</sub> -N Daily Average Loading Limit: 10 lbs/day	NH <sub>3</sub> -N Daily Average Concentration Limit: 3 mg/L	NH <sub>3</sub> -N Single Grab Concentration Limit: 15 mg/L
January 2006	c	3.78	c
February 2006	10.10	6.97	c
March 2006	c	5.34	15.8
April 2006	10.54	7.78	c
May 2006	26.6	19.9	36.4
June 2006	15.3	11.9	30.8

NH<sub>3</sub>-N = Ammonia Nitrogen   lbs/day = pounds per day   mg/L = milligrams per liter   c = in compliance

### III. DENIALS

The City generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the City pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the City's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: City of Shepherd, Docket No. 2006-1877-MWD-E" to:  
  
Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
2. The City shall implement and complete a Supplemental Environmental Project ("SEP") in accordance with TEX. WATER CODE § 7.067. As set forth in Section I, Paragraph 6 above, Three Thousand Seventy-Two Dollars (\$3,072) of the assessed administrative penalty shall be offset with the condition that the City implement the SEP defined in Attachment A, incorporated herein by reference. The City's obligation to pay the conditionally offset portion of the administrative penalty assessed shall be discharged upon final completion of all provisions of the SEP agreement.




3. The provisions of this Agreed Order shall apply to and be binding upon the City. The City is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the City fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the City's failure to comply is not a violation of this Agreed Order. The City shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The City shall notify the Executive Director within seven days after the City becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the City shall be made in writing to the Executive Director. Extensions are not effective until the City receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the City in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
7. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the City, or three days after the date on which the Commission mails notice of the Order to the City, whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.



**SIGNATURE PAGE**

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
For the Executive Director

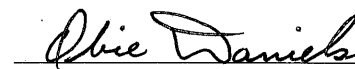
8/9/2007  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
Signature

4-12-07  
Date

Obie Daniels  
Name (Printed or typed)  
Authorized Representative of  
City of Shepherd

Mayer  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenues Section at the address in Section IV, Paragraph 1 of this Agreed Order.



**Attachment A**  
**Docket Number: 2006-1877-MWD-E**

**SUPPLEMENTAL ENVIRONMENTAL PROJECT**

<b>Respondent:</b>	<b>City of Shepherd</b>
<b>Payable Penalty Amount:</b>	<b>Three Thousand Seventy-Two Dollars (\$3,072)</b>
<b>SEP Amount:</b>	<b>Three Thousand Seventy-Two Dollars (\$3,072)</b>
<b>Type of SEP:</b>	<b>Pre-approved</b>
<b>Third-Party Recipient:</b>	<b>Texas Association of Resource Conservation and Development Areas, Inc. ("RC&amp;D")- Unauthorized Trash Dump Clean-Up</b>
<b>Location of SEP:</b>	<b>San Jacinto County</b>

The Texas Commission on Environmental Quality ("TCEQ") agrees to offset a portion of the administrative Penalty Amount assessed in this Agreed Order for the Respondent to contribute to a Supplemental Environmental Project ("SEP"). The offset is equal to the SEP Amount set forth above and is conditioned upon completion of the project in accordance with the terms of this Attachment A.

**1. Project Description**

**A. Project**

The Respondent shall contribute to the Third-Party Recipient pursuant to the agreement between the Third-Party Recipient and the TCEQ. Specifically, the contribution will be used to coordinate with city and/or county governmental officials regarding the clean up of sites where trash has been disposed of illegally. Eligible sites will be limited to those where a responsible party can not be identified and where there is no pre-existing obligation to clean up the site by the owner or the government. Additionally, reasonable efforts must have already been taken to prevent the dumping. SEP monies will be used to pay for the direct cost of collection and disposal of debris. All dollars contributed will be used solely for the direct cost of the project and no portion will be spent on administrative costs. The SEP will be done in accordance with all federal, state and local environmental laws and regulations.

The Respondent certifies that there is no prior commitment to do this project and that it is being performed solely in an effort to settle this enforcement action.

**B. Environmental Benefit**

This SEP will provide a discernible environmental benefit by helping rid communities of the dangers and health threats associated with non-regulated trash dumps which contaminate air and water, and harbor disease carrying animals and insects.





C. Minimum Expenditure

The Respondent shall contribute at least the SEP Amount to the Third-Party Recipient and comply with all other provisions of this SEP.

**2. Performance Schedule**

Within 30 days after the effective date of this Agreed Order, the Respondent must contribute the SEP Amount to the Third-Party Recipient. The Respondent shall mail the contribution, with a copy of the Agreed Order, to:

Texas Association of Resource Conservation and Development Areas, Inc.  
1716 Briarcrest Drive  
Bryan, Texas 77802-2700

**3. Records and Reporting**

Concurrent with the payment of the SEP Amount, the Respondent shall provide the TCEQ SEP Coordinator with a copy of the check and transmittal letter indicating full payment of the SEP Amount to the Third-Party Recipient. The Respondent shall mail a copy of the check and transmittal letter to:

Enforcement Division  
Attention: SEP Coordinator, MC 219  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

**4. Failure to Fully Perform**

If the Respondent does not perform its obligations under this SEP in any way, including full payment of the SEP Amount and submittal of the required reporting described in Section 3 above, the Executive Director may require immediate payment of all or part of the SEP Amount.

The check for any amount due shall be made out to "Texas Commission on Environmental Quality" and mailed to:

Texas Commission on Environmental Quality  
Financial Administration Division, Revenues  
Attention: Cashier, MC 214  
P.O. Box 13088  
Austin, Texas 78711-3088

The Respondent shall also mail a copy of the check to the TCEQ SEP Coordinator at the address in Section 3 above.



**5. Publicity**

Any public statements concerning this SEP made by or on behalf of the Respondent must include a clear statement that the project was performed as part of the settlement of an enforcement action brought by the TCEQ. Such statements include advertising, public relations, and press releases.

**6. Clean Texas Program**

The Respondent shall not include this SEP in any application made to TCEQ under the "Clean Texas" (or any successor) program(s). Similarly, the Respondent may not seek recognition for this contribution in any other state or federal regulatory program.

**7. Other SEPs by TCEQ or Other Agencies**

The SEP identified in this Agreed Order has not been, and shall not be, included as an SEP for the Respondent under any other Agreed Order negotiated with the TCEQ or any other agency of the state or federal government.

